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December 3, 2004

BY HAND DELIVERY

Mr. Lawrence H. Norton
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 5576

Dear Mr. Norton:

On behalf of the New Democrat Network ("NDN"), this letter is submitted in response to the complaint filed by Timothy A. McKeever in the above-referenced matter. The complaint contains no "facts which describe a violation of a statute or regulation," 11 C.F.R. § 111.4(d)(3) (2004). Moreover, the actual facts contradict the complaint's unsubstantiated assertions. Accordingly, the matter should be immediately dismissed and the file should be closed.

A. The Complaint Does Not Contain Sufficient Facts to Allege a Violation

The Commission may find reason to believe only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation. *See* 11 C.F.R. §§ 111.4(a), (d) (2004). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true, and provide no independent basis for investigation. *See* Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons, MUR 4960 (Dec. 21, 2001).

The complaint alleges that NDN sponsored "electioneering communications and public communications" to support Tony Knowles, the Democratic candidate for Senate in Alaska. Complaint at 2. Yet the complaint is barren of specific facts that would

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constitute a violation if proven true. It includes no copy or script of any television advertisement. Indeed, it includes no details that would purport to describe the contents of an advertisement. It identifies no one who has seen such an advertisement, or who even claims to have heard about it.

Having imagined that NDN sponsored ads that referred to a federal candidate, the complaint then proceeds to speculate that those ads were coordinated with Tony Knowles through a time buyer used both by the Knowles campaign and NDN.¹ No fact is offered to support the theory that any information flowed from Knowles to NDN. Rather, the complaint says only that it "seems likely" that coordination took place, even while admitting – twice – that "[i]t is unclear" what really happened. Complaint at 2.

Thus, the complaint seeks a government investigation while offering nothing but unsubstantiated and conclusory claims. The Commission has steadfastly refused to initiate investigations solely on the basis of "mere speculation." Statement of Reasons, MUR 4960. Accordingly, the Commission should dismiss the complaint summarily without further inquiry.

B. The True Facts Demonstrate That the Complaint's Allegations Are False

"[A] complaint may be dismissed if it consists of factual allegations that are refuted with sufficiently compelling evidence provided in the response to the complaint." *Id.* Here, the evidence demonstrates that the assertions offered by the complaint are completely untrue. Far from having been "electioneering communications and public communications ... [that] expressly advocate the election or defeat of a clearly identified candidate for federal office", Complaint at 2, the actual television advertisement that NDN sponsored did not even mention any federal candidate at all.

On the CD-ROM accompanying this response is a copy of the broadcast advertisement that NDN produced and distributed in Alaska. *It contained no reference to any clearly identified candidate.* Therefore, the complaint's claim of coordination between NDN and

¹ The fact of a common vendor between a candidate and an outside group, standing alone, is not sufficient cause for investigation. "[V]endors . . . are not in any way prohibited from providing services to both candidates or political party committees and third-party spenders." *See* Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 436 (Jan. 3, 2003) (final rules). The Commission considered and rejected both a prohibition on the use of common vendors between campaigns and outside organizations, and a presumption of coordination when common vendors were employed. *Id.*

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the Knowles campaign is wholly without merit. The advertisement was not an electioneering communication. *See* 11 C.F.R. §§ 100.29(a)(1) and 109.21(c)(2). It did not republish Knowles campaign materials. *See id.* § 109.21(c)(2). It did not expressly advocate the election or defeat of Knowles or any other candidate. *See id.* § 109.21(c)(3). Finally, it did not meet the additional content standard that requires a reference to Knowles or his opponent in proximity to the election. *See id.* § 109.21(c)(4). The content standard for a claim of coordination between Knowles and NDN is not met.

Even if the content standard had been satisfied, the conduct necessary for any finding of coordination is absent. The complaint presents no facts to suggest that NDN's media-buying firm communicated any information to NDN concerning the Knowles campaign. It could not have done so, because NDN in fact did not coordinate the advertisement with the Knowles campaign.

C. Conclusion

Because the complaint presents no facts describing a violation of a statute or a regulation, and because the facts contradict its conclusory claims, the Commission should summarily dismiss the complaint.

Very truly yours,



Brian G. Svoboda
Counsel to the New Democrat Network

Enclosure

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